

**GENERAL SESSION
HAZARDOUS WASTE MANAGEMENT COMMISSION (HWMC)**

August 11, 2005

9:00 A.M.

1738 East Elm

**Bennett Springs Conference Room
Jefferson City, MO 65101**

COMMISSIONERS PRESENT

Patrick Gleason, Chairman
Tim Warren, Vice-Chairman
Ben Kessler
Susan Williamson
Norella Huggins
Derrick Standley
Paul Schmidt

CALL TO ORDER

Patrick Gleason, HWMC Chairman, called the General Session to order at 9:30 A.M.

EXECUTIVE SESSION

An Executive Session was not held since there were no Executive Session Agenda Items.

APPROVAL OF MINUTES

Motion to approve the General Session April 18, 2005, minutes was made by Commissioner Kessler and seconded by Commissioner Huggins.

Motion carried.

APPROVAL TO FILE DERT FUND PROPOSED RULEMAKING, REGULATORY IMPACT REPORT'S (RIRs) COMMENTS/RESPONSES, AND SMALL BUSINESS IMPACT STATEMENTS /FISCAL NOTES

Ken Koon, Brownfields/Voluntary Cleanup Program, (B/VCP) informed the Commission that the RIRs had been posted for public comment on July 17, 2005, in the Kansas City Star, the St. Louis Journals, public libraries, and on the DERT Fund website. Mr. Koon referred the Commission to the handouts they had been given for more detailed information.

Mr. Koon told the Commission that the motion to approve filing of the Drycleaning Environmental Response Trust (DERT) Fund Proposed Rulemaking, RIRs, Comments and Responses to the RIRs, Small Business Impact Statements and fiscal notes was being withdrawn at this time, because the comments were not due back in until September 17, 2005. He further explained that what comments are received would then be provided by the department to the Commission for review.

Mr. Koon presented the following two options to the Commission for consideration:

- To hold a telephone conference call around September 30, 2005, to discuss the comments received and any possible changes that may need to be made to the rule and a suggestion to schedule a February 9, 2006, Commission meeting in order to meet the February 15, 2006, deadline for information being submitted to the Joint Committee on Administrative Rules (JCAR).
- To wait to make any recommendations on the RIRs and filing of the rule at the October 13, 2005, Commission meeting which would call for the December 9, 2005, Commission meeting to be moved back, because of the need for the required public comment period from the time of filing.

Mr. Koon told the Commission that no comments have been received as of yet and that he didn't expect any new comments, since the department, the stakeholders and the opposition have all been kept informed and are familiar with the DERT Fund Rulemaking being proposed.

Vice-Chairman Warren suggested to Chairman Gleason, that a telephone conference call be expedited in order to keep on schedule. Chairman Gleason agreed and it was decided that Ken Koon would work with Commission Secretary Robbin Stout to schedule a telephone conference call, as suggested.

Mr. Koon answered general questions regarding the DERT Rule Proposal and using the state of Illinois risk-based program as a comparison, also explained fiscal note changes that occurred.

REQUEST TO DISMISS APPEAL-EXPERT MANAGEMENT, INCORPORATED (EMI)

Don Dicks, Permits Section, presented a brief history and answered questions regarding the EMI Appeal No. PER-05-1A. Mr. Dicks explained that Mr. Donald J. Pawlowski, representative for EMI, sent a letter, dated June 17, 2005, asking that the Appeal be dismissed. Mr. Pawlowski states in his letter that the Missouri Department of Natural Resources and EMI had cooperatively worked together to resolve their differences and as a result had reached an "amendable modification" of the permit. Mr. Dicks asked that the Commission dismiss the EMI appeal based upon this agreement and Mr. Pawlowski's request.

Motion was made by Commissioner Huggins and seconded by Commissioner Williamson to dismiss the EMI Appeal No. PER-05-1A.

The roll call vote was as follows:

Patrick Gleason, Chairman	Yes
Tim Warren, Vice-Chairman	Yes
Ben Kessler	Yes
Susan Williamson	Yes
Norella Huggins	Yes
Derrick Standley	Yes
Paul Schmidt	Yes

Motion carried.

UPDATE-MIDWEST OIL REFINING COMPANY (MIDWEST) VARIANCE PETITION RECOMMENDATION

David Giarratano, Compliance and Enforcement, gave a brief update and answered questions regarding Midwest's Variance Petition Recommendation. Mr. Giarratano informed the Commission that this was an "information only" agenda item, because the public comment period would not end for another week to ten days. He reminded the Commission that a variance was granted last year Midwest and that the request for this variance would be presented at the October 2005 commission meeting. Commissioner Huggins asked Shelley Woods, Attorney General's Office (AGO) how many years a variance of this type can be granted. Ms. Woods said that general practice in the past has been two years.

Commissioner Huggins reminded the Commission of its concern regarding the possibility of a rush on such variances, when they granted Midwest's variance last year; pointing out that no such rush had occurred. Robert Geller, HWP Interim Director, told the Commission that the Midwest Variance request was the only one of this type the HWP had seen.

Vice-Chairman Warren asked if it was known how many businesses there are of similar size as Midwest that could potentially request a variance. Mr. Giarratano said he knew of approximately five to six such companies. Commissioner Kessler asked if these companies had also asked for relief. Mr. Giarratano told the Commission that while there have been no requests for relief from these facilities, there have been complaints about the fee. Commissioner Kessler asked if these facilities have been informed that they can request a variance and if so who informs them and how. Mr. Giarratano said that when he receives a complaint he informs them of the variance procedure. Mr. Geller suggested that the variance option and procedures be included along with the annual renewal letters sent to the facilities.

Chairman Gleason raised the question of fairness to facilities of Midwest's size. Shelley Woods, AGO, and Robert Geller, HWP Interim Director agreed that that any changes to the rule would have to be made by changing the statute and any questions of unfairness to facilities of any size would have to be dealt with at that level. David Giarratano explained the "usage-based" rule set up in keeping with the statute and answered questions regarding it.

Vice-Chairman Warren explained the need to look at ways to accommodate a business category that apparently is economically disadvantaged because of the way the statute is written. Mr. Giarratano informed the Commission that the department has tried to present ideas to the trade association for reduction of the burden on smaller companies, but has met with opposition from the Missouri Trucking Association and the American Trucking Association. He explained that the bigger motor carriers primarily support these associations and view economic fairness based on mileage only.

Vice-Chairman Warren asked Ms. Julia E. Lamborn-Gettinger, Midwest, if she had any comments or suggestions regarding a more fair or equitable way to accommodate the fee in the future. Ms. Lamborn-Gettinger told the Commission that she could see Midwest having to continue to return year after year for variances due to the economic impact the fee has on Midwest as a small company. She told the Commission that she didn't think other small companies are coming forth because of the possibility of not having the tenacity to do so or the lack of understanding as to what a variance is. Ms. Lamborn-Gettinger also said Midwest knew nothing about the increased fee until after it had been passed and they received the bill for the increased fee. She told the Commission that she believed the bill to be slanted towards the large trucking industry and expressed concern for job and benefit loss of Midwest employees due to the financial burden the increased fee has brought to Midwest.

Vice-Chairman Warren suggested that Midwest and other like companies join together and approach the problem as a larger body, rather than the single representation and voice of Midwest alone. Mr. Giarratano offered to provide Ms. Lamborn-Gettinger with a list of such licensed transporters. Commissioner Kessler asked Ms. Lamborn-Gettinger if she would be willing to do so. She said she was willing, but pointed out that while it was a good suggestion, the group from the list may be only five or six and was still small in comparison to the overall voice and influence of the larger transporters. Robert Geller, HWP Interim Director, told Ms. Lamborn-Gettinger that after she organized the listed transporter group, the program could help with dialogue facilitation if necessary by arranging telephone conference calls. Ms. Lamborn-Gettinger thanked the Commission for its attention, understanding, and guidance regarding Midwest's situation.

Commissioner Standley said he thought the Legislation knew what they were doing when they passed the fee increase and that it made sense to him what they did. While he agreed that the system isn't perfect, he said the way it is set up is basically the only way it can be kept track of without creating a regulatory nightmare. Commissioner Standley said that if you are going to be in the business of hauling hazardous waste this fee should not be something that is going to bankrupt you. He said that while he thought the fee is just and should be left alone, if it is to be addressed, it should be brought before the legislature and not the HWMC.

REQUEST TO REFER GAS AND MORE (ST21264) TO THE AGO'S OFFICE IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Angela Oravetz, Compliance and Enforcement, briefed the Commission and answered questions regarding the program's request to refer Gas and More (ST21264) to the AGO in order to compel compliance and pursue or negotiate a civil penalty.

Ms. Lisa Ernst, Gas and More, (ST21264) presented a brief history and answered questions regarding Gas and More's request not to be referred to the AGO. Ms. Ernst informed the Commission that Gas and More wasn't fully aware of what all was involved in opening the business, was operating at a loss and was unable to afford to pay for the required financial responsibility. She told the Commission that Gas and More was proposing to drain their tank, as a means to avoid being in violation, until financial responsibility could be established.

Chairman Gleason pointed out that ignorance of the law is not an excuse for failure to comply. He told Ms. Ernst that if the state was in agreement and reasonable timelines could be set, then he would agree to the draining of the tank. Ms. Ernst said that draining the tank basically meant

that Gas and More would shut down. Commissioner Standley recommended that Gas and More still be referred to the AGO to ensure compliance. Chairman Gleason suggested that Gas and More be referred to the AGO if the draining of the tank doesn't happen within an HWP approved timeline. Commissioner Standley pointed out that there are many compliance issues in the Lake of the Ozark area and that at some point, something has to be referred to the AGO to set an example that this cannot continue. He said that people have to come to the realization that when they come to the Lake of the Ozark area they are expected to come into compliance just as they would be expected to anywhere else. Commissioner Kessler questioned making an example of a small company such as Gas and More. Commissioner Standley responded saying that it's usually the larger companies that are in compliance and the smaller companies who aren't.

Chairman Gleason suggested that the Commission entertain the motion to refer Gas and More to the AGO if the tank is not drained by August 15, 2005. Shelley Woods, AGO, recommended that any agreement made be in writing and based upon the tank staying drained until a certain time, rather than based upon the tank being drained by a certain date. She said this could be done by a referral to the AGO. Ms. Woods explained that settlement agreements are usually sent over to AGO where they can be drafted up by AGO, even without a referral. She recommended that the motion include that the draining of the tank be in writing.

Vice-Chairman Warren cautioned against Gas and More being referred while it is seeking additional funding to meet its financial responsibility. He said he preferred to keep it within the department at this time, but that it is referred if it is not in compliance by the next HWMC meeting in October. Shelley Woods, AGO, recommended that the Commission defer the referral of Gas and More to the AGO on the condition that the company enter into a written settlement agreement with the Department of Natural Resources, under the terms of the AGO.

It was explained to Ms. Ernst that if the tanks are not drained by August 15, 2005, and kept drained until financial responsibility is obtained, then Gas and More will be referred to the AGO to compel compliance and pursue or negotiate a civil penalty. Ms. Ernst said she understood that this would be a written document.

Motion was made by Commissioner Standley to defer the referral of Gas and More to the AGO on the condition that the company enter into a written settlement agreement with the Department of Natural Resources, under the terms of the AGO and was seconded by Commissioner Kessler.

Motion carried.

REQUEST FOR REFERRAL OF COMPLIANCE AND ENFORCEMENT CASES TO THE ATTORNEY GENERAL'S OFFICE IN ORDER TO COMPEL COMPLIANCE AND PURSUE OR NEGOTIATE A CIVIL PENALTY

Mike Martin, Compliance and Enforcement, and Dan Massey, AGO, gave a brief history and answered questions regarding the request to refer 46 underground storage tank (UST) cases to the AGO in order to compel compliance and pursue or negotiate a civil penalty.

The AGO provided the Commission with a Memorandum on Financial Responsibility Requirements, as well as the following information:

- The 46 UST cases being referred had failed to respond to an AGO February 14, 2005, letter that had been sent to 150 UST owners and operators requiring them to obtain an appropriate

Financial Responsibility (FR) and informing them about requirements, providing general information about FRs.

- Department of Natural Resources and Petroleum Storage Tank Insurance Fund (PSTIF) website and contact information were also included in the letter, as well as enclosures of the Missouri State Regulations.
- After the 60-day response deadline passed, AGO sent a second letter to the 46 UST owners and operators who had not obtained an appropriate FR mechanism or had not contacted the AGO as required. This letter demanded compliance with FR requirements and included a Settlement Agreement.
- The Settlement Agreement provided for payment of a \$1,000.00 civil penalty and that the owner and operator of the FR-less facility would apply for and obtain an appropriate FR mechanism within 60 days.

Mr. Massey informed the Commission that the facilities that did obtain a policy from either the PSTIF or another insurance provider or demonstrated they could self-insure, after the first letter was sent out, were removed from the list. He explained that while these facilities were not released from their past violations, they were considered to be in compliance at that time and that there would be a negotiation with the department of an appropriate civil penalty, if required. Mr. Massey said that around 90 facilities either obtained FR or demonstrated they were not required to have FR and that they were temporarily closed. He said that registration forms were also updated and amended with correct information during the process, accurately reflecting any temporary closures.

Mr. Massey told the Commission that approximately 15 facilities responded to the second letter by sending in the signed Settlement Agreement and a penalty check. He informed the Commission that these facilities were also removed from the list and given a stay, allowing them the extended time, agreed upon, beyond the 60 days to obtain FR.

Mr. Massey said that out of the 56 facilities left on the list, about 15 had already been referred to the AGO at the HWMC April and June 2005 meetings. He referred the Commissioners to the hard copy list in their packets of the remaining 41 facilities being requested to be referred by the Commission to the AGO for litigation. Mr. Massey told the Commission that the future plan is to confirm that these 41 facilities are actually operating by conducting site visits and to file lawsuits in the next three weeks to one month. He informed the Commission that facilities who obtained their FR in that time period would also be removed from the list and dealt with in the same way as other facilities who had responded to the letters. Mr. Massey said they would be considered as being in compliance with their FRs and would either pay a penalty or negotiate a suspended penalty for that violation.

Vice-Chairman Warren asked if every facility had a registered owner/operator listed.

Mr. Massey said that while there was an owner/operator listed it might not be the correct owner/operator. He explained that some of the facilities had changed hands and that the new owner may not have complied with the new UST law by submitting an amended owner registration form. Mr. Massey informed the Commission that when the AGO sent out the letters it used the department's registered owner list and that the letters were certified when mailed. He said that the AGO checked with the PSTIF for correct addresses when some of the letter had been returned and assured the Commission that the AGO did everything it could do to obtain correct addresses for these facilities. Mr. Massey told the Commission that the AGO had contacted just about everybody, if not everybody, on the list.

Commissioner Huggins asked if the \$10,000 was the cost of compliance. Mr. Massey explained that the \$10,000 is the deductible the facility must be able to demonstrate it can pay, before the bank will submit a letter of credit to the insurance provider. He said there was a small registration fee of \$100 and a reasonable monthly fee of \$10.00 per tank, through the PSTIF.

Commissioner Huggins pointed out the case of Gas and More being unable to comply and asked if it was possible that many of those on the referral list could find themselves in a similar situation and be forced to close. Mr. Massey said he had not spoken with most of the facilities' contact persons and reminded the Commission that the referral list is facilities that had ignored the department and the AGO's correspondence. He said that some of these facilities might have substantial UST law violations in addition to their FR violations.

Danny Atie, owner of Sali's Incorporated's Discount Smokes and Beer (ST0001331) and Bannister Phillips 66 (ST0003154), addressed the Commission regarding the referral of these facilities to the AGO. Mr. Atie briefed the Commission on the history and present status of Bannister Phillips 66 explaining that he lives out of state and leases his facilities out for others to manage. He said that the manager of Bannister Phillips 66 isn't able to get a bond or the required \$10,000 to come into FR compliance. Mr. Atie told the Commission that he has contacted the AGO about the matter. Mr. Atie asked the Commission what he could do to help his situation. Chairman Gleason said that the appropriate answer to Mr. Atie's question is that the facility be referred to the AGO to find out what needs to be done. Mr. Massey responded saying that unless Mr. Atie can obtain insurance his station presents no less of a risk to the state of Missouri than any of the other 39 facilities on the AGO referral list. Mr. Massey said that while the AGO, the department, and the PSTIF try to be helpful by providing as much information as possible and will continue to do so, Mr. Atie may be responsible for obtaining a policy for his lessees as the owner of these two facilities. Mr. Atie informed Mr. Massey and the Commission that Sali's Incorporated Discount Smokes and Beer (ST0001331) already had insurance. Chairman Gleason asked Mr. Massey to confirm Sali's Incorporated Discount Smokes and Beer (ST0001331) insurance, since that facility was still on the referral list. Mr. Massey agreed to check into it, but also informed the Commission that Carol Eighmey, PSTIF, said that the facility was not insured through PSTIF. Mr. Atie raised a question regarding payment of the \$10,000 deductible. Carol Eighmey, PSTIF, told Mr. Atie and the Commission that the \$10,000 deductible is not required to be paid up front. She explained that the facility's owner/operator must provide proof that if there was a claim they would be able to "scrape up" the \$10,000 deductible. Ms. Eighmey said she used the term "scrape up" because the easiest way to meet that requirement is to present a letter from a bank saying that the bank stands behind the owner/operator of the facility as being able to come up with the \$10,000. She explained that it is not a letter of credit and isn't as difficult to come up with as a letter of credit would be.

Geary Kenneth, Rush Hour #9 (ST0002099), gave a brief history, presented an update on the status of Rush Hour #9 and answered questions regarding the facility being referred to the AGO. When asked by Chairman Gleason if he had received the AGO letters, Mr. Kenneth responded saying that he personally did not receive them and explained that he was relatively new to the management of this facility and that the manager before him was no longer with the facility. He told Chairman Gleason that he had received the letter from Robbin Stout, HWMC Secretary, which listed Rush Hour #9 as an agenda item requesting an AGO referral and that he was before the Commission to see what he needed to do to bring Rush Hour #9 into compliance. Mr. Kenneth told the Commission that the insurance wasn't in effect when he received the letter, but that he has applied for insurance and was awaiting its approval. Carol Eighmey, PSTIF, confirmed that Mr. Kenneth had applied for insurance through PSTIF. Ms. Eighmey told the Commission that a policy could be issued within about two weeks, if all of the required

information has been submitted. Mr. Massey, AGO, explained that in the past some facilities have been known to apply and be denied insurance repeatedly as a means to avoid being referred to the AGO. While Mr. Massey commended Rush Hour #9 for its insurance application submission to PSTIF, he did request that the Commission consider referring Rush Hour #9 to the AGO as a means of assuring that the policy is issued. Chairman Gleason agreed with Mr. Massey.

Commissioner Schmidt clarified an insurance application process. He said there is no outside underwriting process that it is basically a completed application and after the application is complete then the policy is issued. Carol Eighmey, PSTIF, explained what requirements demonstrate proof of compliance for insurance coverage. Mr. Massey suggested that Mr. Kenneth maintains and submits current contact information regarding UST registration of facilities managed to the state. Mr. Massey pointed out that compliance to the UST law requires updated information. Mr. Kenneth said that there have been times in the past that he has submitted updated information regarding facility name changes and apparently the changes he submitted were not made. He asked if a form was available to fill out for such changes. Commissioner Standley suggested that Mr. Kenneth ask for the paperwork back so that he has a record of the changes made and a current compliance file to refer to. Mr. Kenneth told Commissioner Standley that he has been keeping copies of what he has sent out. Commissioner Standley suggested that Mr. Kenneth maintain complete files to make sure he has what he needs to meet the required UST law updated information.

Chairman Gleason asked if there was anyone else present who wanted to address the Commission regarding the AGO referral list. There were no other responses.

Vice-Chairman Warren asked for an update on the St. Louis Public School Garage. Mr. Massey, AGO, said he had received several letters from St. Louis Public School Garage stating that they did not have to come into compliance regarding financial assurance. Mr. Massey told the Commission that he informed St. Louis Public School Garage their interpretation was incorrect and their response unacceptable.

Motion to refer the list of referrals to the AGO was made by Vice-Chairman Warren and seconded by Commissioner Huggins.

Motion carried.

-There was a five-minute break at this time-

REVISION OF THE HAZARDOUS WASTE INSPECTION AND ENFORCEMENT MANUAL

Keith Bertels, Compliance and Enforcement, gave a PowerPoint® Presentation and answered questions regarding the revision of the Hazardous Waste Inspection and Enforcement Manual (HW I&E Manual). Mr. Bertels informed the Commission that the Hazardous Waste Program has drafted changes to the Inspection and Enforcement Manual and that the Regional Office inspectors had already begun implementing these changes at the beginning of new Fiscal Year (July 1, 2005).

Mr. Bertels' presented the Commission with the following information along with handouts:

- Reasons for change:
Over half of all the existing 2500 large and small active generators in Missouri do not have an inspection record in the database. This is because of the limited force of the ten investigators available, the amount of time each inspection site takes (40 annual inspections per investigator) and the increase in complaint inspections that take away from the inspections of existing generators. Based upon this information, there is a need to take the necessary steps to shorten intervals between inspections and increase the total of completed yearly inspections.
- New procedures:
There needs to be a limited amount of effort put into inspection writing and follow-up work on sites that are essentially in compliance or have violations of lesser environmental concern. The first step toward this is to determine what types of violations exist, if any. The action taken will depend on whether it is a High Priority or a Class 1 and 2 Violation. Once that is established each violation has steps that are defined specifically to that category on how to deal with the violation accordingly.
- Expected procedures:
The Department of Natural Resources will begin conducting initial visits at newly registered hazardous waste generators. These initial visits will be focused on providing information that will help new generators understand the requirements for managing their waste. The HW I&E Manual will need to be revised to include these initial visits. The department is also developing a departmental General Inspection and Enforcement Manual to address issues that are consistent across the various environmental media. The HW I&E Manual will need to be changed to better fit with the department's manual.

Kevin Perry, REGFORM, asked if the manual would be available to the public. Mr. Bertels said that the manual has not been available in the past and that he didn't know if it was appropriate to make it available to the public at this time. Robert Geller, Interim HWP Director, said that he didn't see why sections of it couldn't be made available to the public. Mr. Perry asked if stakeholders had been involved in the changes that have been made and if they would be included in any additional changes to be made. Mr. Bertels said that the stakeholders were not involved in the changes that have been made and that he didn't know if they would be involved in any additional changes to be made. Mr. Perry asked if compliance visits would be conducted by the central office or by regional offices. Mr. Bertels informed Mr. Perry that regional offices would conduct compliance visits. Commissioner Huggins pointed out that the regional office compliance visits were consistent with Doyle Childers, Department of Natural Resources Director, wanting to make things more user friendly and assistance up front. Mr. Bertels agreed with Commissioner Huggins. He pointed out that the department knew there were too many hazardous waste generators to get to and the changes that have already been made were an effort by the department to enable the inspectors to make more site compliance visits in a short period of time. Mr. Bertels said that efforts were being made to provide more information on what compliance expectations are.

- New Tools:
The Small Quantity Generator Handbook has recently been updated and is in the process of being prepared as an interactive CD-ROM. It is expected to be on the website in the near future and distributed in future small quantity generator inspections. A website distribution of hazardous waste information through list-serve is already in operation. This website maintains an e-mail listing of people who have signed up at the website to receive updated

hazardous waste information. This automated system sends the hazardous waste information as an email to everyone on the list. An automated inspection report has also been in the making. This report puts a draft together, saving time for the inspector.

Vice-Chairman Warren asked if laptops would be more feasible for the inspectors instead of going back to the office to enter information. Keith explained that laptops are bulky and would be awkward to carry during site inspections. He said that the department is considering tablet computers for the inspectors. Mr. Bertels added that the handbook was also being prepared to be interactive on the website.

Commissioner Standley expressed concern regarding decentralization and the expectation of regional offices to be experts on everything. He said that there hasn't been a history of consistency in inspections among the regions, with the exception of the inspectors who had served in the Jefferson City Regional Office (JCRO) when it was operating.

Commissioner Standley added that the JCRO inspectors were excellent at their jobs and that the Jefferson City region had the most in compliance facilities because of the job performance of the JCRO inspectors. Commissioner Standley said that even though he agrees with the decentralization protocol, there are situations that call for an institutional memory that should be centralized. He said that unfortunately, generators often understand the subject matter far better than regional staff. He pointed out that this may be because regional office staff find themselves having to deal with so many other issues that they may not be able to follow up on the site as needed. Commissioner Standley said that as a result, the inspector doesn't really know what he should be looking for, as would central office staff since that is what they do.

Robert Geller, HWP Interim Director, pointed out that the decentralization direction was in process before Doyle Childers took his position as Director of Missouri Department of Natural Resources and that the focus is on improving the efficiency of field staff. He said that the decisions on what roles the central offices verses the regional offices play are evolving issues that continue to be discussed. Mr. Geller assured Commissioner Standley that the department understands such concerns and that there is a focus on maintaining a consistency between the programs and divisions. Commissioner Standley said that the focus needs to be on a program that is more cost effective and more user-friendly. He explained by "user-friendly" that he meant one that is centralized and understands exactly what they are talking about and who will reduce regulatory entanglements down the road by reporting accurate information and offering sufficient follow-up and sufficient communication.

Commissioner Standley said that the Environmental Protection Agency (EPA), Region VII, expressed their desire to see school districts made small/large quantity generators of hazardous waste. Keith Bertels said that it would depend upon whether the school has a regulated quantity of hazardous waste. Commissioner Standley said that it was EPA's intention that most schools do have a regulated quantity of hazardous waste. Keith Bertels said that he did not know whether or not most schools have a regulated quantity of hazardous waste, but if they did they should be registered as a hazardous waste generator.

Lucy Thompson, Missouri Department of Natural Resources, Environmental Assistance and Outreach, said that while colleges and universities are generators, elementary and secondary schools are not generators. She explained that they have laboratories, but they average only one shipment a year of hazardous waste. (It was difficult to hear everything Ms. Thompson said, because she remained seated farther back in the room and did not step up to the microphone.)

Kathy Flippin, Compliance and Enforcement, informed the Commission that she has been involved in a mercury related workgroup which also deals with the chemical handling for schools and that she will be working with the Department of Elementary and Secondary Education. Ms. Flippin said it is targeted to anyone in this area (from janitors to teachers) who could potentially come in contact with these chemicals. Commissioner Standley suggested that there be guidance provided on who they should receive chemicals from, pointing out that EPA was concerned about this.

Dan Schuette, Interm Director, Air and Land Protection Division, spoke to the Commission regarding Kansas City Household Hazardous Waste reviews of several schools in the area, identifying the type of chemicals they have, how and where they store these chemicals and how to dispose of these chemicals safely. Mr. Schuette said he believed that the program has received additional grant funds to do more work in that regard. He addressed the centralization, decentralization issue, saying that this had been an ongoing problem since the department was begun back in the 70's. He encouraged programs to work together and pointed out that there are good inspectors in every region. He also said that every effort is being made to streamline procedures and to keep stakeholders informed. Mr. Schuette spoke of maintaining state authority as well as keeping stakeholders involved.

Kevin Perry, REGFORM, addressed the issue of the number of complaint investigations going up and pointed out that this could lead to certain problems. He asked how the department would characterize the usefulness of responding to complaint calls. Mr. Perry asked if these calls yielded the results the department is trying to produce from the enforcement program. Keith Bertels said that it does provide worthwhile results in specific cases. Mr. Perry questioned the department responding to every complaint as being a rational approach and a proper use of state resources. Mr. Bertels said that there are a very large number of complaints and that a very small percentage of these complaints require the department to take action. Dan Schuette said that he thought it was a proper use of state resources, if nothing else, but for educational purposes. He said if it were solely enforcement efforts it would probably be a waste of time, but if you can gain educational efforts with facility, the community, the neighbors, etc., then it is worth the time. Mr. Schuette pointed out that the department deals mainly in areas of water, odor control, etc., and that the department tries to evaluate the priority status of each call received. Commissioner Kessler praised the department's efforts and said that he thought a lot of the problems occur because of the individuals and facilities that actually cause the problems. Shelley Woods, AGO, said she has noticed that the complaints do not appear to be "neighbor verses neighbor" complaints, which she said seems to appear to be more so in the other programs. Kevin Perry said that he thought the Class 1 Violation offered an opportunity for iteration and personally thought that it was what the law calls conference, conciliation, and persuasion. Mr. Perry pointed out that he didn't necessarily see an opportunity for that under the High Priority Violation. He asked if there are times when the department becomes aware of a violation at the same time as the responsible party does and they are handling the situation responsibly on their own without being compelled to do so by the state. Mr. Perry pointed out that such a situation would be an opportunity for conference, conciliation, and persuasion. Mr. Bertels said he thought it to be more of a resource issue and that the High Priority Violations typically take a lot more time in dealing with the company, but at the same time, pointed out that the department needs to address environmental threats as quickly as possible. Mr. Bertels said that the department wants the regional office to send such cases directly to the enforcement staff. He said that didn't mean that the discussions would stop, but it would mean that the inspectors would be free to continue with other inspections.

UPDATE-TANKS RISK-BASED CORRECTIVE ACTION (RBCA) RULE

John Balkenbush, Tanks Section Chief, gave a brief update and answered questions regarding the Tanks Risk-Based Corrective Action Rule. Mr. Balkenbush announced the resignation of Fred Hutson, Remediation Unit Chief, twenty-year veteran with the department, with sixteen of those years served in the Tanks Section. Mr. Balkenbush credited Mr. Hutson for being instrumental in the regulation currently used in the RBCA and overseeing the cleanups. Mr. Balkenbush informed the Closure Unit and the Remediation Unit had been combined and Tim Chibnall, Tanks Section, would assume those combined duties. Mr. Balkenbush said that as a result of the added duties, the Tank Section's comments on the RBCA and making any changes in the rulemaking would be suspended until some key staff positions are filled. He said that Tank Section's core objective is to close and cleanup sites with what remaining resources are presently available.

Commissioner Huggins asked if it was true that because of the loss of funds there are no longer any tank inspectors and tank inspections have stopped. Mr. Balkenbush said it was true. Commissioner Warren asked if the EPA might take over the program. Robert Geller, HWP Interim Director, pointed out that there was always that challenge to maintain the program and assured the Commission that the HWP was trying to do everything it could to maintain its authority and commitment to the program. Commissioner Warren asked the status of the HWP Tanks Section. Mr. Balkenbush said there had been 26 full time employees (FTEs) last year, but that the section currently only has 15 FTEs, including himself. Commissioner Huggins asked about the status on the Tanks Revised Guidance comment period. Mr. Balkenbush said that comment period closed on June 30, 2005, after being sent out to about 200 stakeholders and ten comments had been received. He said the comments would be placed on the web and that a detailed departmental response was being prepared for each individual comment received.

DEPARTMENTAL MISSOURI RISK-BASED CORRECTIVE ACTION (MRBCA) UPDATE

Linda Vogt, HWP Director's Office, presented a brief update and answered questions regarding the MRBCA. She informed the Commission that 27 out of 31 U.S. EPA comments had been resolved with the remaining U.S. EPA comments being related to exposure factors and the use of maximum contaminate levels. She said ongoing meetings for further discussions are planned. She told the Commission that some changes to the Technical Guidance were approved at the last workgroup meeting in April 2005 and have been posted on the RBCA website and will be discussed at the next workgroup meeting. Ms. Vogt said that ongoing discussions on Institutional Control and Long-term Stewardship are planned, with the next meeting scheduled for August 17, 2005. She said that the next workgroup meeting is scheduled for August 23, 2005, where all MRBCA issues will be discussed as needed. Commissioner Huggins commended the resolution of the 27 out of 31 EPA comments.

SENATE BILL 225

John Beard, Budget and Planning Section, updated the Commissioners and answered questions regarding the Senate Bill 225 that was passed during the 2005 legislative session. He informed them that the Bill made a number of significant changes in the Hazardous Waste Law pertaining to the regulation of generators. Mr. Beard referred the Commissioners to handouts they were given in reference to those changes and addressed each individual change made.

Commissioner Huggins asked how much revenue the fee on batteries would bring in. Mr. Beard said that there wasn't a lot of data to compare trends and that it would possibly take two years or longer to see any kind of a pattern. Commissioner Huggins said she thinks that there is a consensus that people realize the fee bill falls short of what is needed and that perhaps if that proves to be the case, the legislature may be asked in the future to give the program more funds. She pointed out that it has become a timing issue where it is not known what exactly the program will need by the next session, making it difficult to predict what to ask for. Mr. Beard also pointed out the time it takes to get a consensus, stakeholder involvement and agreement on anything that asks for increases or changes. Commissioner Kessler asked how the battery fee worked. Mr. Beard explained that there would be a retail charge of fifty cents on a new battery purchase. Commissioner Warren asked what batteries were covered by this charge. Mr. Beard said it would cover anything 6 volts and above. He also added that there is an agricultural exemption when the user offers certification that it is for agricultural purposes.

Commissioner Standley asked the effect on the program regarding the change in generators no longer being required to register, report, or pay fees directly to the Hazardous Waste Program. Mr. Beard said that it simplifies the process for both the generators and the program. He explained that it involved a lot more work and confusion in the past when the program had to get generators located outside the state of Missouri to pay the fees. He said that with the changes it will be significantly much less work for the program because the fees and recording information will be collected from 15 to 20 in-state facilities rather than about a thousand out-of-state generators that used to be collected by the state. Mr. Beard pointed out that the fee rate is now significantly less than it was before. Shelley Woods, AGO, explained that out-of-state generators did not owe that much because they only used in-state treatment, storage and disposal once or twice, which would not effect the recovery rate that much.

Mr. Beard pointed out that even though the due date for the fees was still January 1st of each year, at the request of some of the treatment storage and disposal facilities (TSDs), the program wanted to provide them the opportunity to pay on a quarterly basis. Mr. Beard explained that unlike the state whose fiscal budget year is July 1st through June 30th, most businesses, as well as the TSDs, use the calendar year. As a result, there are some TSDs who haven't allowed for the fees, because at the time they had figured their budgets for the year 2005 they didn't know the fee was coming and they aren't prepared to pay the fees on January 1, 2006. These TSDs are requesting a one-time short period of extension (30 to 45 days) within the next accounting year so that they can figure the fee into the budget for future payment. The program is willing to work with this request, but realizes it will probably have to bring a variance before the Commission to approve the extension request. Commissioner Standley asked Mr. Beard to explain the variance once more, which he did.

Mr. Beard explained that the intent within the Senate Bill 225 was to remove the registration renewal fee that is currently in the law for all generators and replace it with an increased \$100 minimum fee that was going to be charged to the generators annually. Mr. Beard pointed out that there had been four fees previously and that the change was being requested to simply the fee structure. He explained that Bill 225 became a combined bill because of the number issues being brought before the legislation at that time and as a result, the fee was not removed. Mr. Beard said the program did not want to take advantage of the situation and may come before the Commission in the future with a request not to collect the additional \$100 minimum fee, since the registration renewal fee was not removed.

Commissioner Standley suggested that the program go back to the Bill's sponsors, obtain a letter from them and present the letter with the variance request. Mr. Beard said that was one of the

steps the program was presently working on. Commissioner Standley asked if anyone had actually complained about the fee. Mr. Beard answered that no one has and that he didn't think that most of the generators were even aware of that there has been a fee structure change in general. Commissioner Standley pointed out that Missouri fees are generally lower than other states and certainly has uses for the fees that are collected. Robert Geller, HWP Interim Director, said that the program was caught in somewhat of a quandary, with collecting the fee and pursuing the generators who didn't pay, yet it was never the program's intention to include that fee. Mr. Beard said that the collection of the extra fee could amount to as much as \$250,000.

MONTHLY REPORTS

Robert Geller, HWP Interim Director, told the Commission that the program was looking into streamlining the Monthly Report with the possibility of a one-page summary. Mr. Geller asked if there were any questions and encouraged input the Commissioners might have regarding the report. There were no questions or comments at this time.

LEGISLATIVE UPDATES

Rob Morrison, Permits Section Chief, updated the Commission on the status of the Uniform Environmental Covenants Act (UECA). He said that the state of Nebraska has either passed UECA or is close to passing it. Mr. Morrison told the Commission that as we move toward RBCA implementation it behooves us to be foresightful in the application of deed notices, notifications, and other assurances that property restrictions are maintained. He informed the Commission that UECA provides a framework for enforcement and an enduring document that runs with the property. He said that although UECA may not be a department priority for this legislative session, he was sure staff would be willing to discuss future possibilities. Mr. Morrison referred the Commission to the UECA website, www.ueca.org for further information. Commissioner Huggins said that while she recently attended the Lake of the Ozarks Environmental Conference, she noticed a lot of UECA support surfaced among the attending attorneys and stakeholders. She pointed out that Kevin Perry had informed her that REGFORM supported it. She reminded the Commission of the "Repair Bill" from last year, pointing out that it didn't have the support needed to pass at that time. She recommended to Trent Summers, Legislative Liaison, replacing the Repair Bill draft and starting over with a clean UECA. Commissioner Huggins said she thought it could be passed if supported by such groups as Missouri Chamber and REGFORM.

PUBLIC INQUIRIES OR ISSUES

There were no additional comments or questions at this time.

OTHER BUSINESS

Vice-Chairman Warren, asked that the Commission to consider starting the HWMC meetings at 8:45 a.m. with Closed Session, instead of 9:00 a.m., and to plan on Open Session being at 9:00 a.m., instead of 9:30 a.m. He said he thought it would help to eliminate the awkward gap the half-hour that the public is left waiting. There was a brief discussion between

Shelley Woods, AGO, and the Commissioners regarding whether or not to have the Closed Session before or after the meeting. The Commission decided to have the Closed Session at 8:45 a.m. with the Open Session immediately following at 9:00 a.m.

Robert Geller, HWP Interim Director, informed the Commission of a Commission Training for the tentative date of October 5, 2005, was being arranged by Trent Summers. He explained that it was an attempt to bring all of the Commissioners together, making sure they understand their responsibilities in a very clear fashion. He told the Commissioners that they might be receiving an invitation from Mr. Summers. Mr. Geller also mentioned that there were tentative plans to possibly have a HWP training as well for the Commission.

Commissioner Huggins brought up House Bill 824 and said she felt that the Commission needs a procedural rule. Ms. Huggins pointed out that Kurt Schafer would be working on this. Commissioner Huggins asked Robert Geller how the Commission would be informed as to any changes that are to be announced regarding the department on a whole. Mr. Geller informed Commissioner Huggins that he would personally send any information he receives regarding such, on to the Commissioners, unless it is apparent that they have already been informed of such.

FUTURE MEETINGS

The Commission decided not to move the October HWMC meeting to Kansas City to coincide with the Kansas City Chamber of Commerce Environmental Reception this year. The Commissioners made the decision did so based on the state budget issues and the fact that other Commissions had not made plans to attend as well. The Commissioners were forwarded any information regarding the reception in case they wanted to attend on their own time.

ADJOURNMENT

Motion to adjourn was made by Commissioner Williamson and seconded by Vice-Chairman Warren.

Motion carried and the meeting was adjourned.

Respectfully Submitted,

Robbin Stout
Commission Secretary

APPROVED

Patrick Gleason-Chairman

Date:_____